

CLAIMS

Convention signed at St. Petersburg July 12, 1822, under mediation of Emperor of Russia, for determining indemnification under decision of Emperor of Russia as to true construction of first article of Treaty of Ghent

Ratified by Russia August 4, 1822

Ratified by the United Kingdom October 4, 1822

Senate advice and consent to ratification January 3, 1823

Ratified by the President of the United States January 9, 1823

Ratifications exchanged at Washington January 10, 1823

Entered into force January 10, 1823

Proclaimed by the President of the United States January 11, 1823

*Superseded by convention of November 13, 1826*¹

8 Stat. 282; Treaty Series 114²

In the name of the most-holy & indivisible Trinity:

The President of the United-States of America, and His Majesty the King of the United Kingdom of Great-Britain and Ireland, having agreed, in pursuance of the fifth Article of the Convention concluded at London on the 20th day of October 1818,³ to refer the differences which had arisen between the two Governments, upon the true construction and meaning of the first Article of the Treaty of Peace and Amity, concluded at Ghent on the 24th day of December 1814,⁴ to the friendly arbitration of His Majesty the Emperor of all the Russias, mutually engaging to consider His decision as final and conclusive; And His said Imperial Majesty, having, after due consideration, given His decision upon these differences in the following terms: to wit:

“That the United States of America are entitled to claim from Great-Britain a just indemnification for all private property, which the British forces may have carried away; and as the question relates to Slaves more especially, for all the Slaves that the British forces may have carried away from places and territories of which the Treaty stipulates the restitution, in quitting these same places and territories.

¹ TS 115, *post*, p. 71.

² For a detailed study of this convention, see 3 Miller 91.

³ TS 112, *ante*, p. 57.

⁴ TS 109, *ante*, p. 41.

"That the United States are entitled to consider as having been so carried away, all such Slaves as may have been transferred from the above mentioned territories to British Vessels within the Waters of the said territories, and who for this reason may not have been restored.

"But that if there should be any American Slaves, who were carried away from territories of which the first Article of the Treaty of Ghent has not stipulated the restitution to the United States, the United States are *not* entitled to claim an indemnification for the said Slaves."

Now, for the purpose of carrying into effect this award of His Imperial Majesty as Arbitrator, His good offices have been farther invoked to assist in framing such convention or articles of Agreement between the United States of America and His Britannic Majesty, as shall provide the mode of ascertaining and determining the value of Slaves and of other private property, which may have been carried away in contravention of the Treaty of Ghent, and for which indemnification is to be made to the Citizens of the United States, in virtue of His Imperial Majesty's said award, and shall secure compensation to the sufferers for their Losses so ascertained and determined. And His Imperial Majesty has consented to lend His mediation for the above purpose and has constituted and appointed Charles Robert, Count Nesselrode, His Imperial Majesty's Privy Counsellor, Member of the Council of State, Secretary of State directing the Imperial Department of Foreign Affairs, Chamberlain, Knight of the order of S^t Alexander Nevsky, Grand Cross of the order of S^t Vladimir of the first Class, Knight of that of the white Eagle of Poland, Grand Cross of the order of S^t Stephen of Hungary, of the Black and of the red Eagle of Prussia, of the Legion of Honor of France, of Charles III of Spain, of S^t Ferdinand and of Merit of Naples, of the Annunciation of Sardinia, of the Polar Star of Sweden, of the Elephant of Denmark, of the golden Eagle of Wirtemberg, of Fidelity of Baden, of S^t Constantine of Parma, and of Guelph of Hannovre. and John Count Capodistrias, His Imperial Majesty's Privy Counsellor, and Secretary of State, Knight of the order of S^t Alexander Nevsky, Grand-Cross of the order of S^t Vladimir of the first class, Knight of that of the White Eagle of Poland, Grand-Cross of the order of S^t Stephen of Hungary, of the Black and of the red Eagle of Prussia, of the Legion of Honour of France, of Charles III of Spain, of S^t Ferdinand and of Merit of Naples, of S^t Maurice and of S^t Lazarus of Sardinia, of the Elephant of Denmark, of Fidelity and of the Lion of Zähringen of Baden, Burgher of the Canton of Vaud, and also of the Canton of the Republic of Geneva, as His Plenipotentiaries to treat, adjust and conclude such Articles of Agreement as may tend to the attainment of the abovementioned end, with the Plenipotentiaries of the United States and of His Britannic Majesty; That is to say; on the part of the President of the United States, with the advice and consent of the Senate thereof, Henry Middleton, a Citizen of the said United States, and their

Envoy Extraordinary and Minister Plenipotentiary to His Majesty the Emperor of all the Russias: and on the part of His Majesty the King of the United Kingdom of Great Britain and Ireland, the Right Honorable Sir Charles Bagot, one of His Majesty's most Honorable Privy Council, Knight Grand Cross of the most Honorable Order of the Bath, and His Majesty's Ambassador Extraordinary and Plenipotentiary to His Majesty, the Emperor of all the Russias. And the said Plenipotentiaries, after a reciprocal communication of their respective full Powers, found in good and due form, have agreed upon the following Articles.

ARTICLE 1st

For the purpose of ascertaining and determining the amount of Indemnification which may be due to Citizens of the United States under the decision of His Imperial Majesty, Two Commissioners and two Arbitrators shall be appointed in the manner following: That is to say: One Commissioner and one Arbitrator shall be nominated and appointed by the President of the United States of America by and with the advice and consent of the Senate thereof; and one Commissioner and one Arbitrator shall be appointed by His Britannic Majesty—And the two Commissioners and two Arbitrators thus appointed, shall meet and hold their sittings as a Board in the City of Washington. They shall have power to appoint a Secretary and before proceeding to the other business of the Commission, They shall respectively take the following oath (or affirmation) in the presence of each other. Which oath or affirmation being so taken and duly attested, shall be entered on the record of their proceedings: That is to say: "I, A. B. one of the Commissioners (or Arbitrators as the case may be) appointed in pursuance of the Convention concluded at S^t Petersburg on the 30th/12th day of June/July One Thousand Eight hundred and twenty two, between His Majesty the Emperor of all the Russias, the United States of America, and His Britannic Majesty, do solemnly swear (or affirm) that I will diligently, impartially and carefully examine, and to the best of my Judgement, according to Justice and equity, decide all matters submitted to me as Commissioner (or Arbitrator as the Case may be) under the said Convention."

All vacancies occurring by death or otherwise shall be filled up in the manner of the original appointment, and the new Commissioners or Arbitrators shall take the same oath or affirmation and perform the same duties.

ARTICLE II^d

If at the first meeting of this Board, the Governments of the United States and of Great Britain shall not have agreed upon an average value, to be allowed as compensation for each Slave for whom Indemnification may be due; then and in that case, the Commissioners and Arbitrators shall conjointly proceed to examine the testimony which shall be produced under the author-

ity of the President of the United States, together with such other competent testimony as they may see cause to require or allow, going to prove the true value of Slaves at the period of the exchange of the ratifications of the treaty of Ghent; and upon the evidence so obtained, they shall agree upon and fix the average value. But, in Case that the majority of the Board of Commissioners and Arbitrators should not be able to agree respecting such average value, then and in that case, recourse shall be had to the Arbitration of the Minister or other agent of the Mediating Power, accredited to the Government of the United States. A Statement of the evidence produced and of the proceedings of the Board thereupon shall be communicated to the said Minister or Agent, and his decision, founded upon such evidence and proceedings shall be final and conclusive. And the said average value, when fixed and determined by either of the three before mentioned methods, shall in all cases serve as a rule for the compensation to be awarded for each and every Slave, for whom it may after wards be found that indemnification is due.

ARTICLE III

When the average value of Slaves shall have been ascertained and fixed, the two Commissioners shall constitute a board for the examination of the claims which are to be submitted to them, and they shall notify to the Secretary of State of the United States, that they are ready to receive a definitive List of the Slaves and other private property, for which the Citizens of the United States claim indemnification; it being understood and hereby agreed that the Commission shall not take cognizance of nor receive, and that His Britannic Majesty shall not be required to make compensation for any claims for private property under the first Article of the treaty of Ghent, not contained in the said List. And His Britannic Majesty hereby engages to cause to be produced before the Commission, as material towards ascertaining facts, all the evidence of which His Majesty's Government may be in possession, by returns from His Majesty's officers or otherwise, of the number of Slaves carried away. But the Evidence so produced, or it's defectiveness, shall not go in bar of any claim or claims which shall be otherwise satisfactorily authenticated.

ARTICLE IV

The two Commissioners are hereby empowered and required to go into an examination of all the claims submitted, thro' the above-mentioned List, by the owners of Slaves or other property, or by their lawful attornies or representatives, and to determine the same respectively according to the merits of the several cases, under the rule of the Imperial decision herein above recited and having reference, if need there be, to the explanatory Documents hereunto annexed marked A & B. And in considering such claims, the Commissioners are empowered and required to examine on oath or affirmation, all such persons as shall come before them, touching the real number of the

Slaves or value of other property for which indemnification is claimed: and also to receive in evidence, according as they may think consistent with Equity and Justice, written depositions or papers, such depositions or papers being duly authenticated, either according to existing legal forms, or in such other manner as the said Commissioners shall see cause to require or allow.

ARTICLE V

In the event of the two Commissioners not agreeing in any particular case under examination, or of their disagreement upon any question which may result from the Stipulations of this Convention, then and in that Case, they shall draw by lot the name of one of the two Arbitrators, who, after having given due consideration to the matter contested, shall consult with the Commissioners and a final decision shall be given conformably to the opinion of the majority of the two Commissioners and of the Arbitrator so drawn by Lot. And the Arbitrator when so acting with the two Commissioners shall be bound in all respects by the Rules of proceeding enjoined by the IVth Article of this Convention upon the Commissioners, and shall be vested with the same powers, and be deemed, for that case, a Commissioner.

ARTICLE VI

The decision of the two Commissioners, or of the majority of the Board as constituted by the preceding article, shall in all cases be final and conclusive, whether as to number, the value or the ownership of the Slaves, or other property for which indemnification is to be made. And His Britannic Majesty engages to cause the Sum awarded to each and every owner in lieu of his Slave or Slaves or other property, to be paid in specie without deduction, at such time or times, and at such place or places, as shall be awarded by the said Commissioners, and on condition of such releases or assignments to be given, as they shall direct: provided, that no such payments shall be fixed to take place sooner than twelve months from the day of the exchange of the ratifications of this Convention.

ARTICLE VII

It is further agreed that the Commissioners and Arbitrators shall be respectively paid in such manner as shall be settled between the Governments of the United States and Great-Britain at the time of the exchange of the ratifications of this Convention.⁵ And all other expenses attending the execution of the Commission shall be defrayed jointly by the United States and His Britannic Majesty, the same being previously ascertained and allowed by the majority of the Board.

⁵ For text of agreement for payment of commissioners and arbitrators, see 3 Miller 129.

ARTICLE VIII

A certified copy of this Convention, when duly ratified by His Majesty the Emperor of all the Russias, by the President of the United States, by and with the advice and consent of their Senate, and by His Britannic Majesty, shall be delivered by each of the contracting parties respectively to the Minister or other agent of the Mediating Power accredited to the Government of the United States, as soon as may be after the ratifications shall have been exchanged; which last shall be effected at Washington in six months from the date hereof, or sooner if possible.

In faith whereof the respective Plenipotentiaries, have signed this Convention, drawn up in two Languages, and have hereunto affixed their Seals.

Done in Triplicate at St Petersburg this Thirtieth/Twelfth day of June/July One Thousand Eight Hundred and Twenty two.

NESSELRODE	[SEAL]
CAPODISTRIAS	[SEAL]
HENRY MIDDLETON	[SEAL]
CHARLES BAGOT	[SEAL]

ANNEXES

[TRANSLATION]

A

The undersigned Secretary of State directing the Imperial Administration of Foreign Affairs, has the honor to communicatè to Mr. Middleton, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, the opinion^a which the Emperor, his master, has thought it his duty to express upon the object of the differences which have arisen between the United States and Great Britain relative to the interpretation of the first article of the Treaty of Ghent.

Mr. Middleton is requested to consider this opinion as the award required of the Emperor by the two powers.

He will doubtless recollect that he, as well as the Plenipotentiary of His Britannic Majesty, in all his memorials, has principally insisted on the grammatical sense of the first article of the Treaty of Ghent, and that, even in his note of November 4/16, 1821, he has formally declared that it was on the *signification of the words in the text of the article as it now is*, that the decision of His Imperial Majesty should be founded.

The same declaration being made in the note of the British Plenipotentiary dated October 8/20, 1821, the Emperor had only to conform to the

^a See Annex A/., p. 67.

wishes expressed by the two parties by devoting all his attention to the examination of the grammatical question.

The above-mentioned opinion will show the manner in which His Imperial Majesty judges of this question; and in order that the Cabinet of Washington may also know the motives upon which the Emperor's judgment is founded, the undersigned has hereto subjoined an extract of some observations upon the literal sense of the first article of the Treaty of Ghent.

In this respect the Emperor has confined himself to following the rules of the language employed in drawing up the act by which the two powers have required his arbitration and defined the object of their difference.

His Imperial Majesty has thought it his duty, exclusively, to obey the authority of these rules, and his opinion could not but be the rigorous and necessary consequence thereof.

The undersigned eagerly embraces this occasion to renew to Mr. Middleton the assurances of his most distinguished consideration.

ST. PETERSBURG, *April 22 [or May 4], 1822.*

NESSELRODE

A/.

Invited by the United States of America and by Great Britain to give an opinion, as arbitrator in the differences which have arisen between these two powers, on the subject of the interpretation of the first article of the treaty which they concluded at Ghent on the 24th December, 1814,⁷ the Emperor has taken cognizance of all the acts, memorials, and notes in which the respective Plenipotentiaries have set forth to his Administration of Foreign Affairs the arguments upon which each of the litigant parties depends in support of the interpretation given by it to the said article.

After having maturely weighed the observations exhibited on both sides:

Considering that the American Plenipotentiary and the Plenipotentiary of Britain have desired that the discussion should be closed;

Considering that the former, in his note of November 4/16, 1821, and the latter, in his note of October 8/20 of the same year, have declared that it is *upon the construction of the text of the article as it stands*, that the arbitrator's decision should be founded, and that both have appealed, only as subsidiary means, to the general principles of the law of nations and of maritime law;

The Emperor is of opinion "that the question can only be decided according to the literal and grammatical sense of the first article of the Treaty of Ghent."

As to the literal and grammatical sense of the first article of the Treaty of Ghent:

⁷ TS 109, *ante*, p. 41.

Considering that the period upon the signification of which doubts have arisen, is expressed as follows:

“All territory, places, and possessions, whatsoever, taken by either party from the other during the war, or which may be taken after the signing of this treaty, excepting only the islands hereinafter mentioned, shall be restored without delay and without causing any destruction or carrying away any of the artillery or other public property *originally captured in the said forts or places, and which shall remain therein upon the exchange of the ratifications of this treaty*, or any slaves or other private property; and all archives, records, deeds, and papers, either of a public nature or belonging to private persons, which, in the course of the war, may have fallen into the hands of the officers of either party, shall be, as far as may be practicable, forthwith restored and delivered to the proper authorities and persons to whom they respectively belong.”

Considering that in this period the words *originally captured, and which shall remain therein upon the exchange of the ratifications*, form an incidental phrase, which can have respect, *grammatically*, only to the substantives or subjects which precede;

That the first article of the Treaty of Ghent thus prohibits the contracting parties from carrying away from the places of which it stipulates the restitution, only the public property *which might have been originally captured there, and which should remain therein upon the exchange of the ratifications*, but that it prohibits the carrying away from these same places *any private property whatever*;

That, on the other hand, these two prohibitions are solely applicable to the places of which the article stipulates the restitution:

The Emperor is of opinion:

“That the United States of America are entitled to a just indemnification from Great Britain for all private property carried away by the British forces; and as the question regards slaves more especially, for all such slaves as were carried away by the British forces from the places and territories of which the restitution was stipulated by the treaty, in quitting the said places and territories.

“That the United States are entitled to consider as having been so carried away all such slaves as may have been transported from the above-mentioned territories on board of the British vessels within the waters of the said territories, and who, for this reason, have not been restored.

“But that, if there should be any American slaves who were carried away from territories of which the first article of the Treaty of Ghent has not stipulated the restitution to the United States, the United States are not to claim an indemnification for the said slaves.”

The Emperor declares, besides, that he is ready to exercise the office of mediator, which has been conferred on him beforehand by the two states, in the negotiations which must ensue between them in consequence of the award which they have demanded.

Done at St. Petersburg, April 22 [or May 4], 1822.

B

The undersigned Secretary of State directing the Imperial Administration of Foreign Affairs, has without delay laid before the Emperor, his master, the explanations into which the Ambassador of His Britannic Majesty has entered with the Imperial Ministry in consequence of the preceding confidential communication which was made to Mr. Middleton, as well as to Sir Charles Bagot, of the opinion expressed by the Emperor upon the true sense of the first article of the Treaty of Ghent.

Sir Charles Bagot understands that, in virtue of the decision of His Imperial Majesty, "His Britannic Majesty is not bound to indemnify the United States for any slaves who, coming from places which have never been occupied by his troops, voluntarily joined the British forces, either in consequence of the encouragement which His Majesty's officers had offered them, or to free themselves from the power of their master—these slaves not having been carried away from places or territories captured by His Britannic Majesty during the war and, consequently, not having been carried away from places of which the article stipulates the restitution."

In answer to this observation, the undersigned is charged by His Imperial Majesty to communicate what follows to the Minister of the United States of America.

The Emperor having, by the mutual consent of the two Plenipotentiaries, given an opinion, founded solely upon the sense which results *from the text of the article* in dispute, does not think himself called upon to decide here any question relative to what the laws of war permit or forbid to the belligerents; but, always faithful to the grammatical interpretation of the first article of the Treaty of Ghent, His Imperial Majesty declares a second time that it appears to him according to this interpretation:

"That, in quitting the places and territories of which the Treaty of Ghent stipulates the restitution to the United States, His Britannic Majesty's forces had no right to carry away from these same places and territories, absolutely, any slave, by whatever means he had fallen or come into their power.

"But that if, during the war, American slaves had been carried away by the English forces from other places than those of which the Treaty of Ghent stipulates the restitution, upon the territory, or on board British vessels, Great Britain should not be bound to indemnify the United States for the loss of these slaves, by whatever means they might have fallen or come into the power of her officers."

Although convinced by the previous explanations above mentioned that such is also the sense which Sir Charles Bagot attaches to his observation, the undersigned has nevertheless received from His Imperial Majesty orders to address the present note to the respective Plenipotentiaries, which will prove to them that, in order the better to justify the confidence of the two Governments, the Emperor has been unwilling that the slightest doubt should arise regarding the consequences of his opinion.

The undersigned eagerly embraces this occasion of repeating to Mr. Middleton the assurance of his most distinguished consideration.

ST. PETERSBURG, *April 22* [or *May 4*] 1822.

NESSELRODE